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E-filed on: September 28, 2006

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re: ) BK-S-06-10725 LBR  
11 USA COMMERCIAL MORTGAGE COMPANY, ) BK-S-06-10726 LBR  
12 Debtor. ) BK-S-06-10727 LBR  
13 ) BK-S-06-10728 LBR  
14 USA CAPITAL REALTY ADVISORS, LLC, ) BK-S-06-10729 LBR  
15 Debtor. ) Chapter 11  
16 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, )  
17 Debtor. )  
18 USA CAPITAL FIRST TRUST DEED FUND, LLC, )  
19 Debtor. )  
20 USA SECURITIES, LLC, )  
21 Debtor. )  
22 Affects: )  
23 X All Debtors )  
24  USA Commercial Mortgage Company )  
25  USA Securities, LLC )  
26  USA Capital Realty Advisors, LLC )  
27  USA Capital Diversified Trust Deed Fund, LLC )  
 USA First Trust Deed fund, LLC )

**MOTION TO WITHDRAW AS  
COUNSEL OF RECORD FOR  
FRANK RAYMOND LEE**

Hearing Date: October 30, 2006  
Hearing Time: 9:30 a.m.

28 **COMES NOW**, the law firm of Goldsmith & Guymon, P.C., and hereby moves this Court for an

1 order granting the undersigned permission to withdraw as counsel of record for Creditor Frank Raymond  
2 Lee. This Motion is made and based upon the accompanying Memorandum of Points and Authorities,  
3 the affidavit of Damon K. Dias, Esq. attached hereto as Exhibit A, all pleadings and papers on file herein,  
4 and the oral argument of counsel upon hearing, if any.

5 DATED this 28 day of September, 2006.

6 **GOLDSMITH & GUYMON, P.C.**

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8 DAMON K. DIAS, ESQ.  
9 Nevada Bar No. 8999  
10 2055 N. Village Center Circle  
11 Las Vegas, Nevada 89134  
12 **Attorneys for Frank Raymon Lee**

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. FACTS**

15 Mr. Lee is a creditor in the USA Capital bankruptcy proceedings. He invested in one or more of  
16 the Trust Deed funds. He retained the undersigned as counsel to assist him in the above referenced  
17 bankruptcy, but has since determined that he no longer requires the assistance of counsel and wishes to  
18 proceed on his own. Based upon this assertion by the client, and after disclosing to client the need to file  
19 proof of claim and otherwise remain diligent in this matter, the undersigned requests that this Court issue  
an Order permitting the undersigned to withdraw from the representation at this time.

20 **II. ARGUMENT**

21 A. **THIS COURT HAS AUTHORITY TO ENTER AN ORDER ALLOWING AN**  
**ATTORNEY TO WITHDRAW AS ATTORNEY OF RECORD FOR A PARTY WHEN**  
**THE REPRESENTATION WILL NOT DELAY THE MATTER, AND WHEN THE**  
**WITHDRAWAL WILL NOT CAUSE MATERIAL ADVERSE EFFECT ON THE**  
**CLIENT.**

22 Pursuant to Local Rule IA 10-6 of the Local Rules of Practice of the United States District Court  
23 for the District of Nevada, counsel must seek leave of the court to withdraw, and such relief may come  
24 after notice to the client and opposing counsel. The rule states that withdrawal may not be granted if  
25 undue delay would result. In the instant case, Creditor is not involved in litigation directly with Debtor  
26 at this time, there are no hearings involving Creditor on calendar as of the time of filing, and furthermore,

1 given the nature of this case, there are many investors not represented by counsel and to allow the  
2 undersigned to withdraw will not contribute to additional delay not otherwise foreseeable. Therefore, no  
3 undue delay will be caused by an order granting this Motion.

4 Nevada Rule of Professional Conduct 1.16(b) states that "A lawyer may withdraw from  
5 representing a client if (1) withdrawal can be accomplished without material adverse effect on the  
6 interests of the client." In the instant matter, Creditor has requested that the undersigned withdraw, as  
7 he is semi-retired and wants to pursue the action on his own. Counsel has informed Creditor that he must  
8 prepare and file a Proof of Claim to protect his interests, and further that he must remain diligent in his  
9 pursuit of his interests in this matter.

10 **WHEREFORE**, for the above stated reasons and the decision of Creditor, the law firm of  
11 Goldsmith & Guymon, P.C. hereby requests that this Court enter an order allowing it to withdraw as  
12 counsel of record for creditor Frank Raymond Lee.  
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14 DATED this 28 day of September, 2006.  
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16 **GOLDSMITH & GUYMON, P.C.**

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